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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,926	08/23/2001	Thomas Welsh	195-01	1408

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EXAMINER

LUGO, CARLOS

ART UNIT PAPER NUMBER

3676

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,926

Applicant(s)

WELSH ET AL.

Examiner

Carlos Lugo

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This Office Action is in response to applicant's appeal brief filed on March 9, 2005.

In view of the appeal brief filed on March 9, 2005, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) File a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) Request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. **Claims 3,5,6 and 8 are rejected** under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4,9 and 10 of U.S. Patent No. 6,527,307 in view of Welsh et al.

Claim 3 of the current application are drawn to a linear compression latch that comprises a housing, a lever handle, and a pawl that is mounted to travel along a first and a second path that is substantially perpendicular to the first path.

Claims 1 and 9 presented in US Pat No 6,527,307 are drawn to a linear compression latch that comprises a housing, a lever, and a pawl that is mounted to travel along a first and a second path that is substantially perpendicular to the first path.

The only difference between claim 3 presented in the current application and claims 1 and 9 presented on the US Pat No 6,527,307 is the naming of member that is rotatable by an operator, a lever or a lever handle.

However, the US Pat No 6,527,307 defines that the member that is rotatable by an operator is a handle (80, Col. 5 Lines 44-52).

Therefore, it would have been obvious to one having ordinary skill in the art to call or name a member that is rotatable by an operator a lever or a lever handle.

As to claim 3 of the current application, the claimed subject matter presented in this claim is the same as the one presented in claims 2 and 10 of US Pat No 6,527,307.

As to claim 5 of the current application, the claimed subject matter presented in this claim is the same as the one presented in claim 3 of US Pat No 6,527,307.

As to claim 6 of the current application, the claimed subject matter presented in this claim is the same as the one presented in claim 4 of US Pat No 6,527,307.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 3 and 5-8 are rejected** under 35 U.S.C. 102(b) as being anticipated by US Pat No 5,201,557 to Schlack.

Regarding claim 8, Schlack discloses a linear compression latch comprising a housing (110); a lever handle (50) rotatable by an operator between a first position and a second position and being mounted in the housing; and a pawl (94 and 96) mounted for substantially linear motion and actuated by rotation of the lever handle and traveling substantially linearly between an open position to a closed position as

the lever handle is rotated between the first position to second position (Figures 3 and 5).

The pawl is mounted to travel between the open position along a first path and an intermediate position (the open position is where element 94 is located in Figure 3 to a position next to the edge of the keeper 99, i.e., the intermediate position) and is mounted to travel in a second path in a direction substantially perpendicular to the first path between the intermediate position and the closed position (from a position next to the edge of the keeper 99, i.e., the intermediate position and the position where 94 is located in Figure 5).

As to claim 3, Schlack discloses that the first path is linear.

As to claim 5, Schlack discloses that the second path is linear.

As to claim 6, Schlack discloses that the latch further comprises a carriage (80) that is mounted for linear motion within the housing (110) and that the pawl is mounted within the carriage.

As to claim 7, Schlack discloses that the latch further comprises connection means (59 and 61) for rotatably connecting the lever handle and the pawl.

Response to Arguments

6. In view of the appeal brief filed on March 9, 2005, prosecution has been reopened in order to address some informalities presented in the previous Office Action.

Regarding the rejection to claims 3,5 and 8 under 35 U.S.C. 101, the rejection has been withdrawn and an appropriate double patenting rejection was made. As to the 112nd paragraph rejection to claims 3 and 5-7, the rejection has been withdrawn.

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As to the 102(b) rejection in view of Tedesco, the rejection has been withdrawn.

However, the examiner maintains the rejection to the claims in view of Schlack.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lugo whose telephone number 571-272-7058. The examiner can normally be reached on 9-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5771.

C.L.

Carlos Lugo
AU 3676

May 9, 2005



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600